

The Honorable James L. Robart

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION, a Washington
corporation,

Plaintiff,

v.

MOTOROLA, INC., and MOTOROLA
MOBILITY, INC., and GENERAL
INSTRUMENT CORPORATION,

Defendants.

MOTOROLA MOBILITY, INC., and
GENERAL INSTRUMENT CORPORATION,

Plaintiffs/Counterclaim Defendant,

v.

MICROSOFT CORPORATION,

Defendant/Counterclaim Plaintiff.

CASE NO. C10-1823-JLR

DEFENDANTS' NONOPPOSITION TO
MICROSOFT'S 8/27/12 MOTION TO
FILE DOCUMENTS UNDER SEAL

**NOTED ON MOTION CALENDAR:
Friday, September 7, 2012**

DEFENDANTS' NONOPPOSITION TO MICROSOFT'S
8/27/12 MOTION TO FILE DOCUMENTS UNDER SEAL
CASE NO. C10-1823-JLR

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I. INTRODUCTION

Defendants Motorola, Inc. (now Motorola Solutions, Inc.), Motorola Mobility, Inc. and General Instrument Corporation (collectively, “Motorola”) do not oppose Microsoft’s 8/27/12 Motion to File Documents Under Seal (Dkt. No. 394) regarding the following documents:

- Limited Portions of Microsoft's Rule 702 Motion to Preclude Testimony by Charles R. Donohoe and Dr. R. Sukumar (Dkt. No. 396); and
- Exhibits 1-3 and 5 to the Declaration of Christopher Wion in Support of Microsoft’s Rule 702 Motion to Preclude Testimony by Charles R. Donohoe and Dr. R. Sukumar (“8/27/12 Wion Declaration”) (Dkt. No. 398).

II. MOTOROLA DOES NOT OPPOSE MICROSOFT’S MOTION TO SEAL

Exhibit 1 to the 8/27/12 Wion Declaration is a copy of the transcript from the August 22, 2012 deposition of Motorola expert Dr. Richard Schmalensee, which was taken under oath in Boston, Massachusetts. At his deposition, Dr. Schmalensee testified extensively regarding the content of both his opening and rebuttal expert reports, which were both designated as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” and which both contain highly confidential information about Microsoft and Motorola business and licensing practices and history. Dr. Schmalensee was also examined extensively regarding the substance of the opening report submitted by Motorola licensing expert Charles R. Donohoe, which report was designated as “CONTAINS CONFIDENTIAL FINANCIAL INFORMATION – OUTSIDE ATTORNEYS’ EYES ONLY – SUBJECT TO PROTECTIVE ORDER,” includes an examination of, and discloses, confidential and non-public financial and business information relating to both Microsoft and Motorola, and relating to licensing and business practices and history. Dr. Schmalensee’s testimony and the expert reports referenced extensively throughout the course of his deposition disclose confidential and non-public financial and business information relating to both Microsoft and Motorola, including as it relates to their confidential licensing arrangements with third parties. Disclosure of this information to third parties and other party employees not

1 covered by the protective order would have the potential to lead to competitive harm.

2 Accordingly, Exhibit 1 should be sealed in its entirety.

3 Exhibit 2 to the 8/27/12 Wion Declaration is a copy of the Expert Report of Charles R.
4 Donohoe. As Microsoft points out (Dkt. No. 394 at 4), this report, which is designated as
5 “CONTAINS CONFIDENTIAL FINANCIAL INFORMATION – OUTSIDE ATTORNEYS’
6 EYES ONLY – SUBJECT TO PROTECTIVE ORDER,” includes an examination of, and
7 discloses, confidential and non-public financial and business information relating to both
8 Microsoft and Motorola, and relating to licensing and business practices and history. Disclosure
9 of this information to third parties and other party employees not covered by the protective order
10 would have the potential to lead to competitive harm. Accordingly, Exhibit 2 should be sealed in
11 its entirety.

12 Exhibit 3 to the 8/27/12 Wion Declaration is a copy of the transcript from the August 24,
13 2012 deposition of Motorola expert Charles R. Donohoe, which has been designated as “Highly
14 Confidential- Pursuant to Protective Order.” At his deposition, Mr. Donohoe testified extensively
15 regarding the content of both his opening and rebuttal expert reports, both of which were
16 designated as “CONTAINS CONFIDENTIAL FINANCIAL INFORMATION – OUTSIDE
17 ATTORNEYS’ EYES ONLY – SUBJECT TO PROTECTIVE ORDER,” and both which include
18 examinations and disclosure of confidential and non-public financial and business information
19 relating to both Microsoft and Motorola, and relating to licensing and business practices and
20 history. Disclosure of this information to third parties and other party employees not covered by
21 the protective order would have the potential to lead to competitive harm. Accordingly, Exhibit 3
22 should be sealed in its entirety.

23 Exhibit 5 to the 8/27/12 Wion Declaration consists of excerpts from the transcript of the
24 August 21, 2012 deposition of Motorola expert Timothy Drabik, which has been designated
25 “CONFIDENTIAL BUSINESS INFORMATION SUBJECT TO THE PROTECTIVE ORDER.”
26 During his deposition, Dr. Drabik testified regarding his opening and rebuttal expert reports,

1 which were designated "Contains Confidential Business Information Subject To Protective
2 Order." In his reports and his testimony, Dr. Drabik discussed sensitive and technical aspects of
3 Microsoft's products, general disclosure of which would have the potential to lead to competitive
4 harm. Accordingly, Motorola does not oppose sealing Exhibit 5.

5 For the reasons stated above, those portions of Microsoft's Opposition that refer to the
6 confidential information contained in Exhibits 1-3 and 5 should also be sealed.

7 **III. CONCLUSION**

8 Defendants do not oppose Microsoft's 8/27/12 Motion to File Documents Under Seal (Dkt.
9 No. 394). Nothing herein is intended as a waiver of Defendants' right to contest Microsoft's
10 designation of material as Confidential Business Information in accordance with the terms of the
11 Protective Order entered on July 21, 2011 (Dkt. No. 72). Defendants expressly reserve the right to
12 do so as the circumstances warrant.

13 DATED this 5th day of September, 2012.

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***Attorneys for Motorola Solutions, Inc., Motorola
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CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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DATED this 5th day of September, 2012.

/s/ Marcia A. Ripley

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